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**Testimony of Donald DeFronzo
Commissioner of Administrative Services**

**Committee on Government Administration & Elections
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Good afternoon Senator Slossberg, Representative Morin, Senator McLachlan, Representative Hwang and distinguished members of the Government Administration and Elections Committee. For the record, I am Commissioner Donald DeFronzo and I want to thank you for the opportunity to submit comments on several bills relating to several procurement-related issues:

- In-state preferences,
- The construction contractor prequalification program,
- The supplier diversity program, and
- Competitive bidding and negotiation in state contracting.

In-State Preferences

SB 456 - An Act Concerning State Contracts and a Preference for In-State Employees

**SB 807 - An Act Concerning Established Local Nonprofit Providers and State
Contracts**

**HB 5736 - An Act Giving Preference to Resident Bidders in the Awarding of State
Contracts**

HB 5988 - An Act Concerning "Buy Connecticut" and State Contracts

HB 6165 - An Act Favoring Connecticut Companies for State Contracts

DAS supports the concept of exploring all possible legal measures to encourage economic development in Connecticut and to ensure that Connecticut state businesses and employers of Connecticut residents have the greatest possible access to state-funded contracts. Because specific language has not yet been drafted, it is difficult to offer particular, detailed, comments on the bills. We would, however, like to offer our thoughts on the general issue of preferences in an effort to assist the Committee as it analyzes these concepts and drafts language.

Of particular concern, of course, is drafting legislation that passes constitutional muster. To that end, we suggest that legislation that relates exclusively to the State's role as a purchaser of goods and services – and does not attempt to regulate the conduct of private companies – will be less susceptible to challenge.

DAS also urges the Committee to carefully weigh the risk that neighboring states may view in-state preferences as protectionist and retaliate by taking protectionist measures of their own. New York, for example, already has legislation restricting the bidding and contract opportunities available to companies located in states with in-state preferences. Moreover, many states have reciprocal preference laws, similar to the one enacted by Connecticut in 2008 (C.G.S. §4e-48). Under such reciprocal preference laws, a state adds a per cent increase to the bid of a nonresident bidder equal to the per cent of the preference given to such nonresident bidder in the state in which such nonresident bidder resides. Receiving a preference from the state of Connecticut will not necessarily compensate a Connecticut business that has lost opportunities to sell goods and services to neighboring states.

When considering what type of in-state preferences may be beneficial and under what circumstances, DAS asks the Committee to bear in mind that preferences often result in paying higher prices for goods and services. DAS believes that it is important that public procurements are made under conditions that foster competition in order to maximize purchasing power and ensure that we do not pass unreasonable costs on to the taxpayers.

Further, establishing new in-state preferences is contrary to expanding the use of multi-state cooperative purchasing -- something the legislature has asked DAS to do because cooperative purchasing creates efficiencies and fosters competition. DAS will be guided by your policy decisions, but we need clear direction about how to reconcile the opposing goals of creating preferences that direct agencies to purchase from higher-priced – but local – vendors and reducing the amount of money the state spends buying goods and services.

Additionally, DAS urges the Committee to consider that, to the extent any preference law requires bidders to produce -- and agencies to verify -- additional data (such as the number of Connecticut residents employed by a company), the additional administrative burdens to both the prospective bidders and the state may result in increased costs, as well as, potentially, decreased participation from the very companies we are trying to assist.

DAS reminds the Committee that there may be other ways to increase local business participation in state contracts without enacting formal preferences. For example, expanding the pool of businesses that qualify as Small Business Enterprises ("SBEs") under the Supplier Diversity Program will have the effect of increasing local business access to state contracts, because (1) only Connecticut companies can qualify as SBEs under the Program and (2) as the pool of SBEs increases, DAS can increase the number of contracts that can be set-aside for them. DAS is also exploring creative ways to encourage large companies to partner with smaller, Connecticut companies to supply needed products, such as hosting "matchmaker events."

Finally, DAS believes that many local companies may have been dissuaded from responding to contract opportunities because the process is currently quite cumbersome. We are analyzing ways to make the state contracting process more streamlined and more inviting to local companies. In fact, as of March 1st, our Small Business Certification process is now paperless: customers can now upload their corporate documents 24/7 as part of their certification process.

Thank you for your consideration of DAS's views regarding these bills. We would be happy to meet with the Committee at any time to discuss it further.

Construction Contractor Prequalification Program

SB 650, An Act Restructuring the Contractor Prequalification Process

On a related note, DAS supports the stated goal of *Senate Bill 650, An Act Restructuring the Contractor Prequalification Process*: to support small businesses of the state and increase the number of small businesses used for state contracts. As noted above, we have already begun looking at ways to make state contracting -- including the prequalification program -- less cumbersome and more business friendly while still achieving the purpose of ensuring that companies that are on state contract are capable, reliable, and trustworthy. In connection with the construction contractor prequalification program, we are considering several ideas, including reviewing the bonding levels and financial documentation required to apply for prequalification.

DAS is interested in any suggestions the Committee may have regarding potential changes to the prequalification statutes to encourage small businesses to participate in the construction contractor prequalification program.

Supplier Diversity Program

SB 656 - An Act Increasing the Number of Companies Eligible to Participate in the State Set-Aside Program

HB 5475 - An Act Concerning State Contracting with Businesses Owned by Minorities and Persons with Disabilities

HB 5877 - An Act Concerning the Set-Aside Program for Minority Business Enterprises and Establishing a Supplier Diversity Council

HB 5974 - An Act Redefining "Minority Business Enterprise"

DAS supports *SB 656, An Act Increasing the Number of Companies Eligible to Participate in the State Set-Aside Program* because we believe that eliminating the requirements that a company must be in business under the same ownership or management, and maintain a principal place of business in the state, for at least one year in order to be certified as a "Small Business Enterprise" will benefit entrepreneurs and encourage job growth and opportunity in the state. Eliminating the ownership and control element will also significantly reduce the amount of documentation companies need to provide to DAS, simplifying the application process for businesses.

We want to be clear, however, that these requirements should be eliminated only from the definition of "Small Business Enterprise." We strongly believe it is necessary to retain the ownership and control requirements for "Minority Business Enterprises" in order to verify that the company is truly owned and managed by a minority and, thus, prevent fraud.

We also support revising C.G.S. § 4a-60g to clarify that companies that are "affiliated" with other companies (where one company owns at least 20% in another company) are considered together in the gross revenues analysis. This clarification is necessary to prevent large companies from spinning off small companies (that they still control) for the sole purpose of getting small company contracting preferences.

Finally, we support the deletion of the provisions in the statutes relating to the "precertification list," because this list will no longer be necessary once the one-year requirement is eliminated from the SBE certification requirements.

HB 5475, An Act Concerning State Contracting with Businesses Owned by Minorities and Persons with Disabilities, HB 5877, An Act Concerning the Set-Aside Program for Minority Business Enterprises and Establishing a Supplier Diversity Council, and HB 5974, An Act Redefining "Minority Business Enterprise," all relate to changing the definition of Minority Business Enterprises and/or the percentage and calculation of the set-aside goals for MBEs. DAS has been involved in several discussions with various stake-holders on these issues and is interested in any suggestions to improve the supplier diversity program.

DAS strongly believes that any attempt to change existing set-aside goals, to create new set-aside categories or to separate out ethnic minority goals from other defined "minorities" (such as women-owned businesses) must be supported with a disparity study. The current set-aside statutes are based on a disparity study that is 25 years old. A new, up-to-date disparity study that identifies differences between the proportion of minority-owned business in Connecticut and the share of state contracting the businesses receive will provide data essential to the process of developing new, legally justifiable goals and definitions.

Competitive Bidding and Negotiation in State Contracting

SB 651 - An Act Requiring Competitive Bidding or Competitive Negotiation for All State Contracts

Senate Bill 651, *An Act Requiring Competitive Bidding or Competitive Negotiation for All State Contracts*, would eliminate all exceptions to the competitive bidding/negotiation requirements and would prohibit any contract from specifying that such contract may be renewed without being subject to competitive bids or competitive negotiation. DAS strongly believes in the importance of competitive bidding and competitive negotiation to ensure that the procurement process is fair, accessible and transparent and that the state gets the best possible value for goods and services. That being said however, there are circumstances when engaging in the full competitive bidding/negotiation process does not serve the best interests of the state.

DAS works hard to anticipate the needs of state agencies and we have over eight hundred active contracts in place that were obtained through the competitive process, but there are occasionally circumstances when unforeseen needs arise due to extraordinary conditions or unusual market conditions. The recent record snowfall, for example, caused agencies to need to hire people to clear the snow of their roofs. Although DAS had roofing contracts in place, the demand exceeded the capacity of our existing contractors and agencies needed to procure additional services. If the state had to wait for the competitive procurement process -- including the 5 day advertising requirement -- to be administered, the state may have faced significant damages and costs due to roof collapses. Subsection (b) of 4a-57 and section 4a-58 give DAS the authority to act quickly in such circumstances to protect the state's interests.

Similarly, subsection (b) of 4a-57 gives DAS the authority to waive competitive bidding in the event that an agency needs to make small, non-recurring purchases of goods or services that are not on contract and cost less than \$10,000. This saves the state money because DAS only exercises this authority when it determines that the time and resources necessary to go through the competitive process would cost the state more

money than the savings that could reasonably be achieved by using the competitive process.

To protect the state against waste and fraud, we have strict protocols relating to when competitive bidding/negotiation can be waived and what agencies must do instead. Agencies must demonstrate to DAS (and, for purchases over \$50,000, the Standardization Committee) why the state would be harmed if the competitive process is not followed. The rigor with which DAS scrutinizes these exceptions is demonstrated by the fact that DAS authorizes waivers under 4a-57(b) in relatively few situations.

Section 4a-57 also gives DAS the authority to waive the competitive process in connection with the purchase of alternative fuel vehicles, electric distribution services, water services, gas distribution services, electric generation services and gas supply services. In practice, however, DAS uses the competitive process to procure alternative fuel vehicles, electric generation and gas supply. Competition, however, is not feasible for the remaining commodities because these highly regulated industries are organized according to strict geographic regions. We simply do not have the ability to obtain multiple quotes or proposals regarding electric distribution, water, or gas distribution.

In addition, DAS believes that a blanket prohibition on renewing contracts without another round of competitive bidding or competitive negotiation is likely to result in the state spending more money - not less - on its goods and services. Currently, when DAS goes out to bid, it notifies vendors as part of the contract terms that contracts may be extended -- this provision is part of the competitive process from the beginning.

The state benefits from this process because it allows the state to benefit from the price reductions that are associated with longer-term commitments while also giving the state the flexibility of a shorter-term contract. For example, when DAS lets a contract for 3 years, with the option to extend for another 3 years, bidders are more likely to give us their 6-year prices upfront in an effort to get the contract. When the first 3 years are up, DAS has the flexibility to consider whether the state will get a better value by going out for a new bid immediately or to extend the contract. DAS will not extend a contract unless doing so is beneficial to the state. If DAS were barred from this strategy, DAS would be forced to either (1) let contracts for the shorter-term and lose the price breaks or (2) let contracts for the longer-term and lose the flexibility to try to obtain better prices at the midpoint of the contract term. Either way, the state is likely to lose money.

DAS is more than willing to discuss whether modifications to the procedures described above are appropriate and ways that we can improve our procurement processes, but we are concerned that eliminating the exceptions entirely would result in higher costs and less efficiency.

Conclusion

Thank you for giving DAS the opportunity to testify about these issues. Please do not hesitate to contact us if you would like to discuss any of these matters in more detail.